

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30006 of 2024

(Arising out of Order-in-Appeal No.HYD-CUS-000-APP-038 to 042-23-24 (APP-I) dated 30.08.2023 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Akash K Ingole ... **Appellant**
S/o Khaso Ingole, R/o Sangola Taluk,
Solapur, Maharashtra – 413 307.

VERSUS

**Commissioner of Customs
Hyderabad** ... **Respondent**
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30007 of 2024

(Arising out of Order-in-Appeal No.HYD-CUS-000-APP-038 to 042-23-24 (APP-I) dated 30.08.2023 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Swapnil Madhukar Mane ... **Appellant**
S/o Madhukar, R/o Goti Village,
Sangli, Maharashtra – 415 311.

VERSUS

**Commissioner of Customs
Hyderabad** ... **Respondent**
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30008 of 2024

(Arising out of Order-in-Appeal No.HYD-CUS-000-APP-038 to 042-23-24 (APP-I) dated 30.08.2023 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

N H Rajendra ... **Appellant**
S/o Late Hanumantha Rao, R/o 912/2,
2nd Cross, Mohalia, Mysore – 570 001

VERSUS

**Commissioner of Customs
Hyderabad** ... **Respondent**
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30009 of 2024

(Arising out of Order-in-Appeal No.HYD-CUS-000-APP-038 to 042-23-24 (APP-I) dated 30.08.2023 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Sachin Vilas Kadam

S/o Vilas Dhyanu Kadam,
C/o NH Rajendra,
Mysore, Karnataka – 570 001

...

Appellant

VERSUS

**Commissioner of Customs
Hyderabad**

Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

...

Respondent

AND

Customs Appeal No. 30010 of 2024

(Arising out of Order-in-Appeal No.HYD-CUS-000-APP-038 to 042-23-24 (APP-I) dated 30.08.2023 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Vonamala Anil Kumar

S/o Jagadeeswaraiah, H.No.10-3-4,
Jagadeesh Villa,
East Maredpally,
Hyderabad,
Telangana – 500 026.

...

Appellant

VERSUS

**Commissioner of Customs
Hyderabad**

Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

...

Respondent

Appearance

Shri P.S. Sastry, Consultant for the Appellants.
Shri A. Rangadham, AR for the Respondent.

Coram:

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30297-30301/2025

Date of Hearing: 05.05.2025
Date of Decision: 13.08.2025

[Order per: ANGAD PRASAD]

All the above appeals are filed against the same Order-in-Appeal No. HYD-CUS-000-APP-038 to 042-23-24 (APP-I) dated 30.08.2023 (impugned order), by which Learned Commissioner upheld the Order-in-Original dated 07.04.2022. Learned Adjudicating Authority ordered absolute confiscation

of goods and currency, confiscation of the vehicle with an option to redeem on payment of fine and also imposed penalties on all the appellants. Since, all appellants are related to same impugned order, so heard together to decide simultaneously.

2. Brief facts of the case are that in pursuance of intelligence, the Officer of DRI reached the premises of at House No. 10-3-14, Jagadeesh Villa, East Marredpally, Near Shenoy Hospital, Secunderabad on 21.11.2019 at around 5.15 P.M. and found 40 gold pieces of 100 grams each bearing "AL ETIHAD DUBAI - UAE 100G 999.0" with logo as "GE" packed in a transparent polythene cover of 1kg pack and cash of Rs. 5,01,500/- (Five Lakhs one Thousand and Five Hundred only) kept in a car in which Shri V. Praneeth Kumar, nephew of the appellant Shri V. Anil Kumar and two other persons were sitted. On enquiry, it was revealed by Shri V. Praneeth Kumar that the said gold was given to them by the appellant Shri Swapnil Madhukar Mane and appellant Shri Akash K Ingole, who came in Maruti Ertiga Car bearing Registration No. KA04MP4692 and took cash which was concealed in a clandestine compartment beneath the hand brake. They informed that they did not have any documents pertaining to the said gold bars or any cash receipt for the amount received from Shri V. Praneeth Kumar. The Officers, along with a lady Officer and the Panchas, then entered the house of the appellant Shri V. Anil Kumar located in the said premises and search the same. But nothing incriminating was found. During the course of investigation, statement of appellants Shri V. Anil Kumar, Shri Swapnil Madhukar Mane and Shri Akash K Ingole were recorded, who stated that the said gold was supplied by the appellant Shri Sachin Vilas Kadam. The appellant Shri Swapnil Madhukar Mane and Shri Akash K Ingole stated that

the cash was brought from Mysore to Calicut concealed in the specially made cavity in the car bearing Registration No. KA04MP4692, that the foreign marked gold was collected from a person mentioned by the appellant Shri Sachin Vilas kadam in Kamat market, Calicut on payment of cash brought and the 5kg of gold was given to Shri V. Anil Kumar's house, in Hyderabad as per the instruction of appellant Shri Sachin Vilas Kadam, handed over the gold to Shri V. Praneeth Kumar, received the cash given by him and concealed it in the specially made cavity in the above said vehicle. Statements of Shri V. Praneet Kumar, nephew of V. Anil Kumar and Shri Murmshetty Shekar, employee of the appellant V. Anil Kumar were recorded, who corroborated the statements of the appellant Shri Swapnil Madhukar Mane and Shri Akash K Ingole and stated that they had received 50 gold bars, totally weighing 5kgs out of which 1kg was already given to Shri Dilip Patel on instructions of the appellant Shri V. Anil Kumar and that the amount for the 10 gold bars was already received by the appellant Shri V. Anil Kumar. The said gold bars were valued by Government registered and approved jewellery valuer, who certified that all the 40 pieces of the foreign mark gold bars are of 999.0% purity (24 karat gold) and valued at Rs. 1,57,52,000/- (One Crore Fifty Seven Lakhs and Fifty Two Thousand only). On reasonable belief that the said gold with foreign marking was smuggled gold and the Indian currency of Rs. 5,01,500/- (Five Lakhs One Thousand and Five Hundred only) and the India currency of Rs. 1,94,96,200/- (One Crore Ninety Four Lakhs Ninety Six Thousand and Two Hundred only) recovered from the vehicle bearing Registration No. KA04MP4692 are sale proceeds of smuggled gold, the same were seized under the provisions of Customs Act, 1962 and the said vehicle valued at Rs. 4,45,699/- (Four Lakhs Forty Five Thousand Six Hundred and Ninety Nine

only) with a concealed compartment used for carrying the smuggled gold and sale proceeds was also seized.

3. Learned Counsel for the appellants submits that the case was investigated by the Officers of DRI, who recorded the statements of the persons concerned as deemed fit and show cause notices were issued to those who were considered to be concerned with the matter including the involvement of the persons who were stated to have supplied the gold and who claimed to have supplied the gold without interrogating them. Even the Adjudicating Authority did not consider the submissions made by Shri Avadhuth Patil, who actually supplied the gold. The persons Shri Swapnil Madhukar Mane & Shri Akash K Ingole, who claimed to have supplied the gold in their retraction of the statement to the Investigation Officer, just after they released on bail, later the person who carried the gold retracted from his initial statement and stated that one Shri Avadhuth Patil of Kerala had supplied the gold and provided all the details of the supplier by sending letters to the investigating team. The investigating team though made a mention about this in the show cause notice, neither investigation was conducted with Shri Avadhut Patil nor a notice was given to him.

4. Learned Counsel for the appellants also urged that seizure was improper and without following the prescribed procedure such as particularly of Seizure Memo and without establishing the foreign nature of the gold in issue. Show cause notice is given to the Appellant Shri V. Anil Kumar for proposing confiscation of gold from whom the gold was stated to have been seized and also issued show cause notice to the Appellant Shri V. Anil Kumar for proposing confiscation of currency, who are alleged to have purchased the gold. The Appellant Shri Swapnil Madhukar Mane was held to have sold

the gold and the currency was seized from him as per Section 124 of the Customs Act 1962. Show cause notice is required to be given to the person from whom the goods are seized or the owner of the goods who claims himself to be owner. The notice proposing confiscation of currency was given to the appellant Shri V. Anil Kumar, who is not the person from whom the currency was seized nor the person who claim ownership of the currency. Thus, the notice given to the appellant Shri V. Anil Kumar proposing confiscation of the currency is illegal and without support of the authority of law. On the other hand, as no notice was given to the appellant Shri Swapnil Madhukar Mane, from whose custody the currency was recovered and seized. Therefore, the currency requires to be returned to the appellant Shri Swapnil Madhukar Mane. Further, no notice was given to Shri Avadhuth Patil, who was stated to have supplied the gold and who claim to have supplied the gold. This aspect was neither considered during adjudication proceedings nor appellate stage.

5. Learned Counsel for the appellants also submits that as per the provision of Section 123 of Customs Act, 1962 the burden of proving that the gold is not smuggled can be shifted only when the seizure is made on the reasonable belief that the same is smuggled and liable to be confiscation. There was no such mention in the Panchanama that the gold was seized under reasonable belief to have been smuggled and liable to confiscation. However, appellants discharged their burden of proving that the gold is not smuggled by producing the invoice of supply as given by Shri Avadhuth Patil of Calicut, who had given his business particulars such as his firm's name, GST registration number, municipal registration number. In addition, details of his procurements of gold with the support of invoice of

his purchase. The Adjudicating and Appellate Authorities relied on the initial statement of the appellant and not considered the retracted statement which is against the law.

6. Learned Counsel for the appellants also submits that the Lower Authorities while confiscating the gold had ordered for absolute confiscation without giving the option to redeem the goods on payment of fine. In the present case, the seizure is town seizure, gold is transported from Calicut to Hyderabad. The importer is not known or address or even presumed that the gold is imported which is against the law since the gold cannot be held as prohibited goods. The person who was stated to have purchased 10 biscuits of 100 gms was unidentified and the value of currency seized is not tallying with worked out value of 50 biscuits being 5000 gms. Therefore, the currency is not the sale proceeds of smuggled gold and not liable to confiscation. So, it is required to be given back on payment of fine.

7. Learned Counsel for the appellants also submits that the seizure of gold and currency are not proper and legal so ordering confiscation of the same is against the law. The import of gold by the appellants was not established on the above grounds, so he prayed to allow the appeals and quash the impugned order.

8. Learned AR for the Department argued that the seizure was made on reasonable belief that the gold was smuggled gold and the cash was sale proceeds. The appellants Shri V. Anil Kumar, Shri Swapnil Madhukar Mane and Shri Akash K Ingole in their initial statements accepted the same. All of them stated that the gold was procured from the appellants Shri Sachin Vilas Kadam and Shri N.H. Rejendra and there was no whisper of Shri Avadhuth Patil. In March 2020, appellants Shri Swapnil Madhukar Mane, Shri

Akash K Ingole and Shri V. Anil Kumar retracted their statements after 4 months claiming that the gold is of Indian origin and that the gold was supplied by Shri Avadhuth Patil. By deposition of the appellant Shri V. Anil Kumar, Shri V. Praneeth Kumar and Shri Swapnil Madhukar Mane, the only conclusion that can be drawn that the gold is smuggled gold and liable for confiscation. The new theory brought forward after 4 months of seizure which is clearly an afterthought. He relied on the following case laws:

- i) K. Rahuman Sait [2021 (376) ELT 476 (Mad)]
- ii) Romesh Chandra Mehta [1999 (110) ELT 324 (SC)]
- iii) Sucha Singh [2010 (262) ELT (P&H)]
- iv) Yegey Diamond [2004 (176) ELT 717]
- v) Pankaj Kumar Tripathi [2009 (238) ELT 529 (Tri-Mum)]
- vi) Padam Narain Agarwal [2008 (321) ELT 397 (SC)]

Learned AR submits that Panchanama started at 17.15 hrs. It is beyond comprehension as to which bank will take cash after closure of normal banking hours. The theory that gold was being taken for testing purity is also not supported by the facts of the case. The gold was with V. Praneeth Kumar and the cash was in the secret chamber of the car brought by the appellant Shri Swapnil Madhukar Mane and the appellant Shri Akash K Ingole, none of them stated the name of Shri Avadhut Patil on the date of seizure, now the new argument is only an afterthought. None stated that the seized gold is of Indian Origin on the date of seizure. Appellant was failed to submit any bill at the time of seizure for such huge quantity of gold. Shri Avadhuth Patil is also silent regarding foreign marking found on the gold. The purported invoice does not mention anything about foreign markings on the gold. Thus, it cannot be said that the impugned gold sold in the said

invoice is one and the same. He also relied in the case of Gunavantrai Seth [2005 (191) ELT 380 (Tri-Kol)]. The seized cash is the sale proceeds of smuggled gold found in possession of the appellant Shri Swapnil Madhukar Mane and the appellant Shri V. Anil Kumar are liable to be confiscated under Section 121 of the Customs Act 1962. The vehicle used for transportation of smuggled gold in concealed compartment and also used to hide the sale proceeds. Hence, vehicle is liable for confiscation under Section 115(2) of the Customs Act, 1962. Since, seized gold are smuggled gold, therefore, onus to prove is otherwise on appellant Shri V. Anil Kumar according to Section 123 of the Customs Act, 1962. He failed to produce any documents/invoices regarding purchase of seized gold. Department relied on D.Srinivas [2002 (148) ELT 946 (Tri-Bang)] affirmed by Karnataka High Court; Subhash Jain [2016 (333) ELT 51 (Del)]. Smuggled gold is prohibited goods, hence liable to be confiscated. Department relied on Kerala High Court judgment in the case of Om Prakash Khatri [2019 (366) ELT 402 (Ker)] which was affirmed by the Hon'ble Supreme Court.

9. Heard Learned Counsel for the appellant and Learned AR for the Department at length and perused the records.

10. Learned Counsel for the appellants submits that Customs Officers without reasonable belief seized the gold as smuggled gold. Learned AR submits that the Officers found 40 gold pieces of 100 gms each bearing "AL ETIHAD DUBAI – UAE 100G 999.0" with logo as "GE". As per Section 110 of the Customs Act 1962 if the proper Officer has reasonable belief that any goods are liable for confiscation under the Act then he may seize such goods.

11. Shri Guru Dasappa, Valuer of Government registration and jewellery examined and reported vide Certificate No. 7, that he examined 40 pieces of the foreign markings gold bears of 999.0% purity (24 Karat gold) and valued at Rs. 1,57,52,000/- (One Crore Fifty Seven Lakhs and Fifty Two Thousand only). It is also important that in report valuer also mentioned mark as on the goods.

12. Learned Counsel for the appellants relied on Commissioner of Customs (Preventive), Shillong Vs Sri Sangpuia [2005 (189) ELT 32 (Tri-Kol)], in which Co-ordinate Bench, Kolkata held that "Foreign origin nature cannot be inferred merely on certain name, symbols etc., on the labels – mere presence of goods with foreign marking could not be considered to be goods of foreign origin which have been imported without payment of customs duty – Place of seizure far away from Border – No expert or trade panel/satisfactory investigation results pointing to foreign origin and smuggled nature of goods". He also relied on Hon'ble Supreme Court decision in the case of Gian Chand Vs State of Punjab [1984 (SC) reported in ECR AT Page 109], in which it was held that "The goods must be smuggled goods. The word "smuggled" means that the goods were of foreign origin and they had been imported from abroad". Learned AR relied on the Hon'ble Allahabad High Court decision in the case of Jalil Ahmed Vs State [1978-SCC-online-All-940] in which it was held that whether the goods with foreign markings and not an *iota* of no evidence was adduced to show that the markings were fake. The minor presumption would be that they were manufactured at the place of which markings were contained. In

the instant case, marking clearly with the word "AL ETIHAD DUBAI – UAE 100G 999.0" with logo as "GE". It is clearly established that seized gold is from outside India. He relied on Hon'ble Supreme Court decision in the case of Pukhraj Vs D.R. Kohli, Collector of Central Excise, Madhya Pradesh, Vidarbha and Another [1962 (3) TMI 2 – SC], in which it was held that "if the circumstances of seizure reasonably justify the belief in the mind of the seizing officer that goods are smuggled goods, the court is not to sit in appeal over his decision of seizing such goods". The Authority has to see whether there are grounds which may prima facie justify the said reasonable belief. Learned AR also relied on the Hon'ble Supreme Court decision in the case of State of Gujarat Vs Shri Mohanlal Jitamalji Porwal and Another [1987 (3) TMI 111 (SC)], in which it was held that the circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstance. Seized gold are in 40 pieces and every piece of 100 gms with each bearing "AL ETIHAD DUBAI – UAE 100G 999.0" with logo as "GE" and no any documents/invoices at the time of seizure. In these circumstances, the proper Officer has reason to belief that the gold are smuggled as required under Section 110 of the Customs Act 1962. Therefore, as discussed above, Customs Officers had sufficient reason to believe that the seized gold is smuggled gold and was liable to confiscation.

13. Learned Counsel for the appellant submits that no seizure memo is enclosed to the Panchanama as required by CBIC Circular No. 01/2017 dated 08.02.2017 which directed as follows:

3. Though Section 110 of the Act *ibid* does not specify passing an order for seizure of goods, it says that where it is not practicable to seize any such goods, the proper

officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

4. In view of the above, in all future cases, the following may be adhered to:

- Whenever goods are being seized, in addition to panchnama, the proper officer must also pass an appropriate order (seizure memo/order/etc.) clearly mentioning the reasons to believe that the goods are liable for confiscation.
- Where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. In such cases, investigations should be fast-tracked to expeditiously decide whether to place the goods under seizure or to release the same to their owner.

14. Learned AR for the Department submits that seizure memo dated 22.11.2019 was issued, simultaneously with the Panchanama and both got concluded at 1 am on 22.11.2019 which described the details as required by the Circular. We have examined the said Panchanama and Seizure Memo and therefore, Learned Counsel argument is not tenable that Department had not followed the prescribed procedure at the time of seizure.

15. At the time of investigation, statements were recorded by the concerned Officer under Section 108 of the Customs Act. 1962. Statements of the appellants, in brief is as under:

15.01. Swapnil Madhukar Mane stated that he was working as driver for N.H.Rajendra @ Raju Bhai in Mysore; he made arrangements for him to stay with his son-in-law Sachin in Calicut; Sachin arranged Ertiga vehicle from Mysore to Calicut with Akash K Ingole as driver along with cash placed in a specially made cavity under the driver's seat; he would drive the vehicle and collect cash arranged by Sachin and also collects foreign marked gold from persons mentioned by Sachin by paying cash; after collecting the foreign marked gold, as directed by Sachin the foreign marked gold will be handed over to certain persons and he would collect cash for the same; regarding the instant case, on the directions of Sachin he along with Akash collected gold from an unknown person in Kamat Market of Calicut; from Calicut they reached Hyderabad and have handed over 5 kgs of gold to Praneeth Kumar who is the nephew of V. Anil Kumar and was given Rs.

1,94,96,200/-; the cash received was concealed in the specially made cavity of the car; the specially made cavity in the car was used for concealing gold and cash and it can be opened by using secret press button beneath the driver's seat; he further stated that he has not given any receipt / invoice for the gold to V. Anil Kumar as it was smuggled gold; he does not know how Praveen disposed of 1 Kg of gold given by him.

15.02. Akash K Ingole stated that he was working as driver of N.H.Rajendra; the vehicle belonging to Rajendra was registered in his name; he also works for Sachin who is the son-in-law of Rajendra; on instructions of Sachin he travels to Calicut with cash arranged by Sachin concealed in the special cavity in the car; he along with Swapnil collects foreign marked gold from persons identified by Sachin; the said gold will be sold to person in Bangalore, Hyderabad and Mysore as told by Sachin and they collect cash for the sale of gold; Regarding the instant case he corroborated the statement of Swapnil.

15.03. Vonamala Anil Kumar stated that he was a partner in Vonamala Jagadishwaraiah Jewellers; he agrees with the contents of the panchanama; he sent his driver to get the gold received from Rajendra for testing the purity of gold bars; he paid cash of Rs. 1,94,96,200/- towards purchase of the gold bullion; the cash was being taken to the bank to make RTGS payment; he admitted that he had purchased 5000 grams of gold bullion but only received 4000 gms; remaining 1000 gms were to reach that night; purchase invoice is not available with him; Rajendra would sent the invoice later; he agreed with the statements of Swapnil and Akash; he did not receive invoices for previous transactions also; he has been buying gold bullion from Sachin of Kerala in cash without invoice; He was aware that the gold available in the cash market was not customs duty and tax paid or legally brought.

15.04. V.Praneeth Kumar stated that V.Anil Kumar was his uncle; he agrees with the contents of the panchanama; as per the instructions of his uncle he received 50 nos., (5000 gms) gold bars from two persons (Swapnil & Akash) and handed over Rs. 1,94,98,200/- in cash to the two persons; he handed over 10 gold bars to one person arranged by Dilip Patel and the amount was already received by his uncle and the same is included in the amount given to Swapnil.

15.05. Anish Pulakanti son-in-law of V.Anil Kumar stated that – V.Anil Kumar informed him the amount to be paid for 5000 gms of gold to the persons coming from Calicut; that Sachin delivers gold on cash basis; that the gold transaction which was made by cash would not enter in book of accounts.

15.06. N H Rajendra stated that – he has a Gold and Silver Refinery shop in Mysore and it is locally called as Raju Bhai Battery Shop; he knows Akash and Swapnil; he never dealt with smuggled gold; he is not aware of the seizure of 4000 gms of gold at Hyderabad by DRI until it was informed to him by DRI; he does not know V. Anil Kumar; he has never supplied any gold to V. Anil Kumar.

15.07. Sachin Vilas Kadam stated that – he has a shop by name Lakshmi Gold and Silver Refinery Shop at Kamat Lane, Calicut; he has not dealt with any smuggled gold nor purchased or delivered any smuggled gold to any of his customers at any point of

time; he knew Swapnil; he disagreed with the statement given by Swapnil; he has not been involved in any kind of smuggling and does not know any person by name V. Anil Kumar; he disagreed with the statement of Akash; the gold bars seized by DRI, Hyderabad under panchanama dt. 21/22.11.2019 does not belong to him; he disagrees with the statement given by V. Anil Kumar and he has no business relation with V. Anil Kumar.

16. Appellants Shri Swapnil Madhukar Mane and Shri Akash K Ingole, later on retracted by their statements vide their letter no. NIL-3/20 and appellant Shri V. Anil Kumar retracted his statement vide letter dated 21.03.2020. Learned Counsel for the appellants submits that the Adjudicating Authority relied on K. Rahuman Sait Vs Commissioner of Customs, Trichy [2021 (376) ELT 476 (Mad)] and observed that retraction beyond 3 months cannot be accepted. The Adjudicating Authority had failed to compute 3 months since these persons were in jail and retracted just after releasing from the jail.

17. Learned AR for the Department states that retraction is based on an afterthought. The appellant Shri Akash K Ingole stated in his statement dated 07.09.2020 that he had signed on that letter upon insistence by the appellant Shri Swapnil Madhukar Mane. He does not understand English language. Both letters related to retraction being in same font and similar contents apparently show these letters were sent by these people on instruction of some other person and that it is an afterthought and not believable. The appellant Shri V. Anil Kumar was released from jail on 31.12.2019 and sent a letter of retraction by dated 21.03.2020. The appellants Shri Swapnil Madhukar Mane and Shri Akash K Ingole were released on 17.01.2020 and sent a letter to the Department vide letter no. NIL/3/2020 which was received in Department on 18.03.2020. The appellant Shri Akash K Ingole in his statement dated 07.09.2020 stated that

"the said letter is in English which I do not understand. I have put my signature upon insisting by Shri Swapnil Madhukar Mane. It is informed by the appellant Shri Swapnil Madhukar Mane that the letter is given by Shri Avadhut Patil to sign. I have not gone through the contents of the paper". We have perused both the letters and find that both the letters are in the same font, same size and same manner. It is also important to note that contents are also similar and printed in the same manner. If earlier statement under Section 108 of the Customs Act were recorded under any duress or coercion etc., then these people as early as possible, after their release from the jail should have sent these letters of retraction. The appellant Shri V. Anil Kumar sent this letter after 80 days from his release and the appellant Shri Swapnil Madhukar Mane and Shri Akash K Ingole have sent this letter after more than 2 months from their release. In these facts and circumstances, as mentioned above, their retraction statements are not genuine and it clearly shows that based on some advice, he tried to mislead the proceedings. Learned AR relied on Surjit Singh Chhabra Vs Union of India [1997 (89) ELT 646 (SC)] in which, Hon'ble Supreme Court held that "confession through retraction is an admission and binds the petitioner". In the instant case, the appellant Shri Akash K Ingole admitted that he had signed on letter after insisting by the appellant Shri Swapnil Madhukar Mane. Therefore, as discussed above, we are of the view that reason given by Lower Authorities in this regard is based on proper appreciation of fact and evidence. Therefore, no any interference is required in this regard.

18. Learned Counsel for the appellant also submits that Shri Avadhut Patil, who was stated to have supplied the gold and who claimed to have

supplied the gold was neither considered during adjudication proceedings nor at the appellate stage. Learned AR for the Department submits that Lower Authorities have gone through contentions and discussed in detail. Learned Adjudicating Authority, have taken the plea of Shri Avadhut Patil in detail, specially in para no. 46 to 46.3 in his order. Learned Commissioner (Appeals) also discussed in his order at para no. 10. Here, it is also important that Shri Avadhut Patil had sent a letter on 16.02.2021 first time after 14 months of the seizure. Steps taken by Shri Avadhut Patil totally unnatural. If any seizure occurred against any persons goods especially in huge quantity of the gold no one can wait till 14 months for response and claiming ownership. Thus, assertion of Shri Avadhut Patil is not cogent and reliable. Hence, Lower Authorities findings are based on facts and circumstances of the case. Therefore, no any force in the submission of Learned Counsel. We agree with Lower Authority's finding in this regard.

19. Now, in so far as issue of burden shifted on the appellants, we find that the relevant provisions are under Section 123 of the Customs Act 1962, cited below:

123. Burden of proof in certain cases.

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person,-

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

20. The gold handed over by the appellant Shri Swapnil Madhukar Mane to the appellant Shri V. Anil Kumar and the appellant Shri Swapnil Madhukar Mane not having any document/invoice relating to the legitimate procurement of said gold. No document/invoice had been recovered at the time of recovery of the gold and sale proceeds. The appellant Shri N.H. Rajendra and Shri Sachin Vikas kadam has denied to supply the gold to the appellant Shri V. Anil Kumar. Appellant Shri V. Anil Kumar has also failed to produce any documents/invoices for proving legal transaction. Therefore, appellants are failed to prove that the seized gold are not smuggled gold. Therefore, seized/smuggled gold are liable to be confiscate as per law.

21. Learned Counsel for the appellants submits that show cause notice proposing for confiscation of gold and currency was given to the appellant Shri V. Anil Kumar, who was alleged to have purchased the gold from the appellant, Shri Swapnil Madhukar Mane. The gold was recovered from Shri V. Praneeth Kumar, nephew of the appellant Shri V. Anil Kumar and therefore show cause notice was required to be given to the person from whom the goods, including currency, are seized or the owner of the goods, who claims himself to be the owner. Show cause notice for seizure of currency was given to the appellant Shri V. Anil Kumar, who is not a person from whom the currency was recovered. Thus, the notice given to the appellant Shri V. Anil Kumar, for proposing confiscation of currency is illegal

and without support of any authority of law. Show cause notice for confiscation of the currency was require to given to the appellant Shri Swapnil Madhukar Mane, from whose possession the currency was recovered and seized. Therefore, confiscating the currency (sale proceeds) is liable to be set aside and returned to the appellant Shri Swapnil Madhukar Mane. Whereas, Learned AR has submitted that show cause notices were issued for confiscation of gold and currency to Shri V. Anil Kumar on the basis of statements dated 22.11.2019 under Section 108 of the Customs Act, 1962 and no any illegality to issue show cause notice to the appellant Shri V. Anil Kumar for confiscation of gold as well as sale proceeds as he claimed to be the owner.

22. Sale proceeds (currency) is goods as defined by Section 2(22) of the Customs Act as thus:

Section 2(22) in The Customs Act, 1962

(22)"goods" includes-

- (a)vessels, aircrafts and vehicles;
- (b)stores;
- (c)baggage;
- (d)currency and negotiable instruments; and
- (e)any other kind of movable property;

Therefore, currency is also goods as defined above.

23. In this regards, Section 124 of the Customs Act is important which provides that:

124. Issue of show cause notice before confiscation of goods, etc.

- No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-

- (a)is given a notice in writing with the prior approval of the officer of Customs not below the rank of a Deputy Commissioner of Customs, informing him of

the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

Therefore, it is legal necessity to issue show cause to one who is the owner or claimed to be the owner of the goods (sale proceeds). Hon'ble Supreme Court in the case of Harbans Lal Vs Collector of Central Excise and Customs [1993 (67) ELT 20 (SC)] held that Section 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such persons is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Section does not lay down any period within which the notice required by it has to be given. The period laid down under Section 110(2) affects only the seizure of the goods and not the validity of notice.

24. Relating to seizure of cash (sale proceeds) show cause notice was issued to the appellant Shri V. Anil Kumar as under:

(iii) A total of Indian currency of Rs. 1,99,97,700/- (Rs. 5,01,500/- which was recovered from Shri V. Praneeth Kumar and Rs. 1,94,96,200/- recovered from the vehicle bearing Registration No. KA04MP4692) which are the sale proceeds of the said smuggled gold and seized vide Panchanama dated 21/22.11.2019 drawn at H.No. 10-3-14, Jagadeesh Villas, East Marredpally, Secunderabad, should not be confiscated under Section 121 of the Customs Act, 1962:

In the show cause notice total recovery of Rs. 1,99,97,700/- in which Rs. 5,01,500/- from Shri V. Praneeth Kumar and Rs. 1,94,96,200/- from Shri Swapnil Madhukar Mane. Show cause notice issued relating both recovery of cash to Shri V. Anil Kumar, whereas after purchase of gold, Shri V. Anil Kumar cannot be considered as owner of sale proceeds (currency) of Rs. 1,94,96,200/- as transaction of sale and purchase was complied and sale price was already handed over in lieu of said gold to Shri Swapnil Madhukar Mane .

25. The appellant Shri Swapnil Madhukar Mane in his statement under Section 108 of the Customs Act, 1962 stated that on the direction of the appellant Shri Sachin Vilas Kadam, he along with the appellant Shri Akash K Ingole collected gold from the unknown person in Kamat Market, Calicut, Kolkata and handed over 5 kgs of gold to Shri V. Praneeth kumar who is nephew of the appellant Shri V. Anil Kumar and was given RS. 1,94,96,200/- (One Crore Ninety Four Lakhs Ninety Six Thousand and Two Hundred only). The cash received was in the specially designed cavity of the car. The appellant Shri V. Anil Kumar stated in his statement that he paid cash of Rs. 1,94,96,200/- (One Crore Ninety Four Lakhs Ninety Six Thousand and Two Hundred only) towards purchase of gold bullion. Therefore, after the purchase the gold bar and handing over of the cash, appellant Shri V. Anil Kumar ceased to be the owner sale proceeds. Since, no one, other than Shri V. Anil Kumar, has claimed to be the owner of the currency, there is no need to issue a show cause notice to any other person. The claim by Mr. Avadhut Patil has already been considered earlier. Show cause notice issued to the appellant regarding Rs. 5,01,500/- (Five Lakhs one Thousand and Five Hundred only), which was recovered from the Shri V.

Praneeth Kumar, nephew of the appellant Shri V. Anil Kumar is proper as per Section 124 of the Customs Act, 1962. Therefore, confiscation of currency of Rs. 5,01,500/- (Five Lakhs one Thousand and Five Hundred only), which was recovered from Shri V. Praneeth Kumar, nephew of the appellant Shri V. Anil Kumar is proper and legal. Since, Shri Swapnil Madhukar Mane has not claimed to be the owner of the sale proceeds and the person who has been stated by him has also denied to be owners. Therefore, show cause notice was issued to a person Shri V. Anil Kumar, who claimed to be the owner, but for the reasons discussed, supra, he cannot be treated as owner. Thus, the provision for issuing of show cause notice to a person, who claimed to be the owner has been complied with.

26. Learned Counsel for the appellant also submits that the imposition of penalties on appellants are redundant since import of gold by the appellants not established. Lower Authorities imposed penalties on appellants and not considered initial statement of the appellant Shri N H Rajendra and Shri Sachin Vilas kadam, wherein, they denied the supply and any role in the matter.

27. Learned AR argued that the appellant Shri V. Anil Kumar confessed to purchased smuggled gold. The appellant Shri Swapnil Madhukar Mane and Shri Akash K Ingole also confessed to carry the smuggled gold in their statement. Therefore, there is no illegality in imposing penalty on these appellants.

28. Appellants Shri N H Rajendra and Shri Sachin Vilas kadam in their statement under Section 108 of the Customs Act, 1962 denied their involvement in the matter. No any other corroborative evidence except

statement of the appellant Shri V. Anil Kumar, Shri Swapnil Madhukar Mane and Shri Akash K Ingole against them.

29. Learned Counsel for the appellants relied on Co-ordinate Bench of Allahabad decision in the case of Commissioner of Customs, Lucknow Vs Sanjay Soni [2022 (381) ELT 509 (Tri-All)] in which it was held that penalty is not imposable only on the basis of incriminating statement made by one of co-accused in absence of any other corroborative evidence which is based on Hon'ble Supreme Court decision in the case of Vinod Solanki Vs Union of India [2009 (233) ELT 157 (SC)], wherein, it was held that on the sole statement of co-accused, another co-accused, cannot be convicted or fastened with penalty etc. There has to be corroborative evidence in addition to the statement of a co-accused. In the instant case, no any corroborative evidence other than statement of the appellant Shri V. Anil Kumar, Shri Swapnil Madhukar Mane and Shri Akash K Ingole against the appellants Shri N H Rajendra and Shri Sachin Vilas Kadam. In these facts and circumstances, imposing penalties on the appellant Shri N H Rajendra and appellant Shri Sachin Vilas Kadam is not sustainable. Imposing of penalty by Lower Authorities except on the appellants Shri N H Rajendra and Shri Sachin Vilas Kadam is proper and based on law. Therefore, imposing of penalties on the appellants Shri V. Anil Kumar, Shri Swapnil Madhukar Mane and Shri Akash K Ingole is liable to be upheld and however on the appellants Shri N H Rajendra and Shri Sachin Vilas Kadam, it is liable to be set aside.

30. Learned Counsel for the appellants submits that the confiscation of the vehicle in issue is also not as per law. Whereas, Learned AR submits that the vehicle was involved in the smugglings of the goods therefore, liable to be confiscated. Adjudicating Authority has given an option to redeem the

seized vehicle on payment of fine. No doubt vehicle was found while smuggling the gold and it is also important that special compartment was made to conceal the smuggled gold as well as sale proceeds. The conveyance used as a means of transport in the smuggling of the gold and sale proceeds. Thus, there is no any illegality or irregularity in the impugned order in this regard.

31. In summary, the Department had sufficient reasons to believe that the gold were smuggled, whereas the appellants have failed to establish that the seized gold was acquired by them through any legal means. Since, gold were of smuggled nature and were rightly held to be liable to confiscation, the sale's proceeds thereof is also liable for confiscation and therefore has been rightly confiscated by the Adjudicating Authority. We do not find any infirmity in the impugned order in this regard.

32. The appeals are partly allowed. The penalties imposed on the appellants Mr. N.H. Rajendra and Mr. Sachin Vilas kadam are set aside and the remaining order is upheld.

(Order pronounced in the Open Court on 13.08.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)